G. R. S. 58]

Previous references.

9 Cont- 90-14 (Rl)

Later references.

1913.

(Forest)

File No. 73-13

Serial Nos. 1 to 7

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 to 7

Part B for February 1916

SUBJECT.

Criminal appeal against the order of acquittal passed by the Assistant Commissioner and 1st Class Magistrate Shwegu, Sub Division in Criminal Case No 112 of 1911-12

From the Govt Advocate-
No 14 dt 20. 7. 1914.
States that the appeal has been dismissed as time barred

W D 1851—GPB—20,000—18-12-15

Mg Abdur Rahman Khan
7. 4. 1916

G.R.S. 11]. 1913-14

GENERAL AND REVENUE SECRETARIAT.

(Judl.)

NOTES.

File No. 7 B-13

FILE HEADING.

Appeal against the order of acquittal & inadequate punishment passed by the 1st Class Magistrate of Shimoga in certain prosecutions for theft of timber

From

The Conservator of Forests

No. 2895- Dated 11-10-10 Received on Camp 18/10/10

Diary No. 9878-	Enclos. 1	Spare Copies. —	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards the judgment of the 1st Class Magistrate, Shimoga, in certain prosecution for theft of ~~timber~~ Sort timber & requests that the records may be perused & orders passed for filing an appeal against the order of acquittal & of inadequate punishment & ~~thereby~~ explaining the long delay in forwarding the case by the Magistrate.

Original

NOTES AND ORDERS.

Submit orders. Bruce has to be consulted.

15/10/10 A note suggesting by the Conservator that it is advisable to file an appeal is not enough. Moreover the District Magistrate who has to take the initiative in such matters, according to

NOTES—First Sheet.

G.P.S.—80,000—12-8-11.

Serial No.

the circular orders. Copies of documents & depositions of witnesses will also have to be sent to enable Govt to consult the Govt advocate on the subject.

If approved the Cmsr will be informed accordingly. LV. 25/10

3. Is this not to be dealt with in B III

2m 11/11

4. B.I. What is the practice?

SPDL 11/11

5 As this is the first time that a case of this kind has been received in this section, no information regarding the practice is available - submitted. BR III may be consulted.

BR 12/11. SB 15/11/13

6. BR III to favour of opinion on the above.

LV 15/11.

7 Subd. Refers for appeals against orders of acquittal in cases in which Govt is a party, for e.g., the present refer in which the Govt Dept was the complainant, are dealt with in the administrative branches. Cases in which both the

NOTE—Contn. sheet.

GPB—60,000—25-9-13.

R.O.

G. R. S. 12]

General and Revenue Secretariat.

File No. 73 of 1913-14

Serial No.

parties are private individuals and the Dist. Magte applies Dist. Moves Govt. solely in the interest of justice are read & dealt with in Br III.

Reg. – 116
17/11/13 MM

8. This case may be dealt with in the admve branch consulting Br III if necessary

9. Appeal time expires on 24-12-13

Br I
10 Submitted for orders. – Please See Minutes
RB 17/11
Secy's note (Marathi)
SPM 17/11
60 17/11.
88 17/11/13

Regd

11. A copy of this Conservators letter may be sent to the Govt Pleader for his opinion in consultn with the Govt for advocate.

12. Govt may be pleased to put up accordingly
ZB 19/4
submitted to 2nd Commr

13. Draft put up accordingly for appl orders.
Submitted Bs.
88 20/11/13 19/11
60 21/11
(to 2nd Commr) Approved
24/11 Draft 24/11
60

NOTE—Contn. sheet.

GPB—60,000—25-9-13.

G. R. S. 12]

General and Revenue Secretariat. | File No. 73 of 1913.

Serial No.	
2	Dom Dist Magistrate, Shimoga Dist No R 3919 & 28-11-1913. Forwards copy of Sl No 1 & calls for his opinion on it.
3	From the Dist Magistrate, Shimoga Dist. No 2.3.1914. States that the period for filing appeal expired on 24.12.13 and that as the records of the case were not available owing to the Lessons & Chief Court in connection with the appeal of the two convicted men, & that if the records be required by the Chief Court as sufficient for endorsing the delay in filing the appeal, the appeal may be filed and the order obtained to have a record in the case of the two men.

6. Subordinates -

Dr 5/3 The Govt Advocate may be unofficially consulted as to whether an application for the re-trial of the two persons who were acquitted may be made to the Chief Court.

8. As regards the 3d man the Chief 6/3/14 Court has ordered that the prosecution may, if so advised, prefer a proper charge against him on which a

NOTE.—Contn. sheet.

GPB—50,000—25-9-13.

G. R. S. 12]

General and Revenue Secretariat. | Jf. File No. 13. of 1913.

Serial No.

legal trial may be held.

88
6/3/14

6/3

W.O.R 138
7.3.14

1) Forwarded unofficially that Govt. does not favour question.

By order
Secretary
6.3.14.
for Secy.

W.O. 87 of 13-14.

T
11/3 Br.

(2) The ground on which the Chief Court as on the revision side set aside the conviction & sentence is that the charge framed against the accused was illegal inasmuch as there was both misjoinder of persons as well as charges. Were an appeal preferred within the period of 6 months allowed by law against the order of acquittal in the case of the other two accused the same obj: would prevail & at the most a retrial on proper charges with all that could have been preferred. Under these circumstances it is doubtful if

NOTE—Contn. sheet.

GPB—60,000—25-9-13.

G. R. S. 12]

General and Revenue Secretariat.

7F File No. 73 of 1913.

Serial No.

4 C

the Chief Court with a request to condone the delay - In a very much stronger case the Chief Court refused to excuse the delay & admit the appeal (vide judgt. printed in C.O. 927-4 dated 20th Oct 1906). In the present case there was no difficulty in applying for & obtaining a certified copy of judgt. or in obtaining the entire record, for perusal & for within the statutory period & in preferring an appeal if so advised against the acquittal order within the time allowed by law. To my mind it seems uncertain whether the Chief Court would consider the explanation for the delay suggested by the D. Magte sufficient & however fair that an appeal should be received & admitted on the receipt from the D. Magte of a certified copy of the judgt & an affidavit

NOTE.—Contn. sheet.

GPB—60,000—25-9-13.

Muz. 8 A] 1026

(7)

Muzrai Secretariat | H File No. 73 of 1913

in support of the explanation for the delay in preferring the appeal. I shall also file a revision petition in the same matter & request the Chief Court to hear both the cases on the revision side in case the appeal should be rejected as time barred.

10.3.14. [illegible]

Submitted for orders.

11/3/14

As the Chief Court have directed the retrial of the convicted accused, I think it will be well if the appeal in respect of the two acquitted persons could be also taken to the Chief Court. Failing the appeal, application for revision may be made as suggested by the Govt. Advocate, so that a retrial of all the three accd. may be secured, if possible

General and Revenue Secretariat. | File No. 73 of 1913.

Serial No.

7 The Dt Magte will, if approved, be requested to take needful steps on this behalf as indicated in the Govt. Advocate's note.

Secretary ✓ 12.3.14

21 Please put up with accounts 14/3

22 Draft noted 15 sp 20 Secretary 13/3/14 13.3.14.

24 2nd member ✓ 14/3

15- Approved 14/3 15/3

16 Done 16.3.14.

8 no

4 To the Govt of Fort St. George Dist Magistrate Tanjore & the Govt Advocate. Ref. 7342-4 & 16.3.14

Orders that the appeal may be issued at once and a petition moved for condoning delay & that Dist Magistrate is requested to

NOTE—Contn. sheet.

G P B—60,000—7-11-13

G. R. S. 12]

(574

(7

General and Revenue Secretariat.

File No. 73 of 1913.

Serial No.	
	make [illegible] copy [illegible] marked in red ink Advocate-General.
5.	From the District Magistrate of Tuticorin, dated 20th March 1913 requiring who is to sign the Vakil's affidavit opposed to in the Govt. Advocate's note and submits draft of one which he would make in case he is required to make it.
	27 Submd for orders. (Vide last line on page 6 of the notes.) Reply of the Govt Advocate's note has been sent to the District Magistrate.
	28 The Govt Advocate may perhaps be consulted on the points raised by the Dist Magistrate.
	26/3.
	26/3/14 29 Forwarded to the Govt advocate unofficially for opinion as to whether the draft affidavit sent by the Dt. Magte will do & whether he can make the affidavit. The file may be treated as immediate
	Sd Rajagopal 26/3

G.O.R. 148 / 26.3.14.

NOTE—Contn. sheet.

G P B—60,000—7-11-13

G. R. S. 12]

General and Revenue Secretariat.

File No. 78 of 191 3.

Serial No.

30 The draft affidavit will for the present do. If the Court calls for more particulars & a more detailed explanation for the delay there is time enough to furnish it - The Dt Magte is the proper person to make the affidavit under the circumstances

26.3.4 forwarded

31 Submitted for orders with a draft

Dt 26/3

26/3

Secy 26/3

32 Issue

S/Asst 30/3

6 To The Dt Magistrate Shimoga

States that it is com- -plained that you -ed the affidavit- in question and that the draft affidavit is handed

NOTE—Contn. sheet.

GPB—60,000—7-11-13

G. R. S. 12]

General and Revenue Secretariat.

File No. 7 of 191 .

Serial No.	
7	From the Govt Advocate No: 14 & 20.7.1914. State that the appeal has been withdrawn as time barred.

To Sent for perusal.

Sd.

13/8/14

Sd (illegible) 13/8/14

(G(8)14

By Will be filed after perusal. The Govt Advocate had anticipated that the appeal would be dismissed as being time-barred.

To avoid such delays it seems to be necessary to issue instructions to all Heads of Depts that whenever a prosecution in which a dept is interested is noted, it is the duty of the local representative of the depts concerned to keep in touch with the trial & take timely steps to file appeals should the decision be unsatisfactory. What now happens is that the departmental

NOTE—Contn. sheet.

G.P.B.—60,000—7-11-13

G. R. S. 12]

General and Revenue Secretariat. | File No. 15 of 191 .

Serial No.

cases & take an interest in the case as soon as a charge sheet is placed before the Magte, there being an impression that the subsequent responsibility for the trial is with the Police & the Public Prosecutor, with the result that many of these prosecutions end in nothing.

36 If the above views are approved the suggestion will be referred to Br III for such action as they may be deemed expedient

2nd Member 20/8/14 HR 20-8-14

37 HS. I approve of the suggestion

Secy 20/8

38 To Br III for further action

20/8/14 HR 20-8-14

NOTE—Contn. sheet.

GPB—60,000—7-11-13

2476.

14

General and Revenue Secretariat.

File No. 7473 of 1913.

Serial No.

In G.O.No. 1600-49 dtd 20-11-15, Govt have directed the Heads of Depts to impress upon their local representatives to take timely steps to file appeals should the decisions be found to be unsatisfactory.

The papers may now be recorded.

16.2.16.

Yes.

17.2.16

19.2.16

NOTE—Contn. sheet.

G.P.B.—60,000—7-11-13

DIARY No. 2895

Rev. Forests

OFFICE OF THE CONSERVATOR OF FORESTS IN MYSORE,

No. [illegible] *Bangalore, dated* 14-06- 191[illegible]

Enclosures 1

From

RAI BAHADUR M. MUTHANNA, ESQ.,
Conservator of Forests in Mysore.

To

K.R. Srinivasiengar, Esq., M.A.,
Secretary to the Government of
H. H. the Maharaja of Mysore,
General and Revenue Departments.

SIR,

In forwarding herewith copy of Judgment passed by the Assistant Commissioner and First Class Magistrate, Shimoga, in a case in which the Forest Department was the complainant and three Mahomedans of Chornedahalli were the accused, I have the honour to state that the complaint was filed in the Court in December 1911, and the case was not disposed of till the end of June 1913- i.e. until after a delay of one year and six months. As far as I can see, there was no reason for this unconscionable delay as the accused and the witnesses were residents of places within nine miles of Shimoga and were therefore readily available. I beg to submit that in consequence of this delay, there has been a gross miscarriage of justice in this case.

2. The guilt of the accused was proved to the hilt,

GPB—1,000—21-11-12

nevertheless two of them,- the chief offenders, were let off on most flimsy grounds and the third punished with a ridiculously inadequate sentence of one month's imprisonment and a fine of five rupees. The first accused is a well-known ~~fruit~~ depredator and the property involved was large. In this circumstance, a more severe punishment was called for. I accordingly beg that the file connected with the case may be kindly sent for, and orders may be passed (1) on the unconscionable delay on the part of the Magistrate in disposing of the case and (2) on the advisability of filing an appeal against the acquittal of the first two accused and for enhancement of the sentence on the third accused.

I have the honour to be,

Sir,

Your most obedient servant,

Conservator of Forests.

FOREST DEPARTMENT.

From

The Conservator of Forests
in Mysore.

To

The Secretary to the Government
of H. H. the Maharaja of Mysore,
General and Revenue Departments.

No.

Dated

Despatched

Enclosures.

SUBJECT.

nevertheless two of them,- the chief offenders, were let off on most flimsy grounds and the third punished with a ridiculously inadequate sentence of one month's imprisonment and a fine of five rupees. The first accused is a well-known ~~fruit~~ depredator and the property involved was large. In this circumstance, a more severe punishment was called for. I accordingly beg that the file connected with the case may be kindly sent for, and orders may be passed (1) on the unconscionable delay on the part of the Magistrate in disposing of the case, and (2) on the advisability of filing an appeal against the acquittal of the first two accused and for enhancement of the sentence on the third accused.

I have the honour to be,

Sir,

Your most obedient servant,

Conservator of Forests.

In the Court of the Assistant Commissioner and First Class Magistrate of Shimoga Sub Di—

This day of June 1913.

Present:— A.V. Ramanatham Esqr. B.A.
I Class Magistrate.

Criminal Case No. 112/11—12.

Complainant. Accused.

Government. (1) Nadarsab
(2) Mahamad Hussain
(3) Abdul Azeez.

The Police of Shimoga Taluk charge sheeted the accused for offences under Sec: 22 of the Mysore Forest Regulation and Sec: 379 of the Indian Penal Code.

2. The following witnesses were examined for the Prosecution.

1. Mr. D. Raja Rao (Forest SDO)
2. Sinanna.
3. Ramappa
4. Mala.
5. Sinanna.

(6) Rev. Nootheah (Forest Ranger)

(7) Keshavamurti Rao (Shanbogue)

(8) Abdulla (Malut)

(9) Putta.

and (10) Basava.

Statement of abdul aziz (3rd accused) before Rev. D. Raja Rao on 15-12-11 was filed for the Prosecution and marked as exhibit P1.

The following articles were produced before the Court.

Articles Nos. 1 to 183. Sawn timber said to have been seized in the accused's house.

" 184 to 216 — Do — in the 1st Shed.

" 217 to 260 — Do — and lists of logs in the 2nd shed.

" 261 - 271 - Bote sawn and unsawn timber — Do — in the 1st saw pit.

" 272 - 287 Sawn timber pieces said to have been seized in sawyer's houses.

" 288 - 325. Freshly cut green timber and a Bike log — Do — in the 2nd saw pit.

~~Read~~

Articles 326 to 331. Six sawn scantlings said to have been found in the river.

" 332 to 337. Six logs of Bete timber said to have been found on the bank of the river

" 338 to 345 Eight teak logs said to have found ~~on the bank~~ near the Agaie Bagilen.

" 346 to 349. Four dressed teak logs said to have been found in shrub jungle in the vicinity of the field.

" 350 & 351. Two teak logs said to have found in the jungle and one of them drawn by an elephant

" 352 to 354 Three leg shackles said to have been seized in the jungle

Articles 355. One branch said
to have been used in
the jungle

3rd accused were charged
as follows: —

"That you accused 1, Madarsab,
2. Mahamad Hussain and 3rd Abdul
Aziz, on or about the 11th day of
December 1911 at Chomedahalli,
dishonestly retained stolen
property, to wit, the timber
before the Court, knowing
or having reason to believe
that same to be stolen property
and thereby committed an offence
punishable under Sec: 411 of the
Indian Penal Code and within
my cognizance"

(4) Accused pleaded not guilty

(5) They stated as follows: —

1st accused Madarsab —

"I heard the charge
read over to me. I was in

in possession of the property produced as is stated to have been seized in my house, in my two sheds, near my house and 16 articles seized in the house of the person to whom I had given them to prepare a cart. I was not in possession of other articles.

I brought them from the jungle under the authority of the license.

I produce the list of witnesses for my defence on the 21st of this month.

I want to cross examine the pro: witnesses 1. Mr: D. Rajah, 2. Wootwink, 3 Sivanna & 4 Manappa.

2nd Accused Mahamad Hussain: _____

"I heard the charge read over to me: I was not in possession of any article

before the Court. I am living with Nadarsab.

I know that the articles found in my house were in Nadarsab's possession.

He has taken licenses from the year 1905 and got the logs cut and removed.

I produce the list of witnesses for my defence on the 21st of this month.

I want to cross examine the Pro: witnesses viz. 1. Raja Rao, 2. Woothiah, (3) Sivanna, (4) Nanappa.

3rd accused Abdul Aziz:—

"I heard the charge read over to me. I was in possession of articles found in my house, in my sheds, in the house of the carpenter and 7 or 8 planks of dry wood in the saw pit & also dry articles found near the village gate. I had collected them under the authority of a license.

I produce the list of witnesses for my defence on the 21st of this month

I want to cross-examine the Pro: witnesses viz. (1) Mr. D. Raja Rao, (2) Woothiale, (3) Sivam and (4) Manappa.

(6) ~~(6)~~ The following witnesses were examined for the defence

1. Mudli
2. Malla.
3. Sivabba.
4. Chaba Meya.
5. Abdulla Sab.
6. Syed Ibrahim Sab.
7. Fakrudeen.
8. Channappa
9. Abdul Malik
10. Mir. Mahamad
11. Woothiale

The following exhibits were filed for the defence: —

D I (a) Rahadari
D I. Case report of Head Quarters Md: Hussain.
D ~~II~~ (2) Mahazar.
D 2(A) License book.
D 3 & D 4 - Cash books of Channa

Shimoga Range from 3-1-05 to
31-1-06 and 31-1-06 to 22-2-07,

D.5 & D.6. Leech books of Humbligeri
Range from 16-7-07 to 22-10-09
and 22-10-09 to 30-4-1913.

D.7. A receipt given by Ranger
Jayaramulu Naidu on
11-1-09 for payment of
one fourth of the value
of some timber.

D.8. A license to remove
timber given under Mr.
Govinda Rao's signature on 5-7-08.

D.9. A license under Mr. Govinda Rao's signature

D.10 — Do —————.

D.11 ———— Do ————

D.12 ———— Do ————

D.13 ———— Do ————

D.14. A receipt under Late Forest
Ranger Jyengar's signature.

D.15. — Do —— Mr. Woodhead's — Do

D.16. The endorsement under Mr.
Krishnamurthi Rao's signature.

D.17. An entry in each book
of Humbligeri Range on 20-6-13,

D.18 ———— Do ———— on 15-4-13.

D. 19. License No. 4 in license book No. 311 of Nuwaraeliya Range.

D. 20. A list showing the logs ~~timber~~ collected by Chinnadchally Abdul Azeez. —

D: 21. Mahazar relating to the list of 13 Bide logs

D. 22. An application of Abdul Azeez dt 29-6-1911. to get the logs stamped ("sold") and to give him permission to remove them.

D. 23. Mr. Woothiah's report No 14 dated 6-7-1911.

D. 24. Item No. 53 in the cash book of Chinnaden Range on 30th June 1905.

C.C 112 of 1911 12

Judgment:-

The Police of Shwedagon have charge sheeted the accused Mabarsali, Muhamad Hussain and Abdul Aziz for offences under Sec: 379 I.P.C. and violation of the Forest rules regarding felling of timber.

The allegations of the Prosecution are as follows:-

On the information given by one Sivanna of Chomabil, the Forest Sub-Ord officer of Shwedagon Mr: D. Rayaton conducted an investigation, in conjunction with the Police Inspector into certain alleged fellings of timber in the Chomedahalen jungle. During the investigation several planks were found in the houses of the accused persons and, in two cases pits belonging to them, and several logs of wood

felled by them were seized near the gate of the village Chondekally on the bank of the river near the village, in the bed of the river and in two spots in the jungle.

The accused admitted having felled all the timber unauthorizedly and could not produce satisfactory licence. Therefore they have been charge-sheeted.

The prosecution have produced no less 355 pieces of wood in the case.

The no: of witnesses examined for the prosecution is ten.

The evidence consists of the investigator's evidence, viz, that of Sri: Raja Rao (P.W. 1) and Boothaya (P.W. 6) that of the former who also speaks to the investigation (P.W. 2), that of the Mahazar witnesses (P.W. 4 & 5) that of two Sawyers

Damzen P.W. (3 & 10) one whom is also a Malagasy witness (P.W.3) that of a Malagasy and an eye witness (P.W.8) speaking to the removal of a log marked "6" said to have been drawn by an elephant and last that of P.W.7, the Hanlaque who speaks to the fact that the tree from which log numbered "6" was felled is Govt. land.

The evidence of P.W. 7, 8 & 9 relates to only the particular log numbered "6" and as the offence relating to it has been severed, ~~for~~ a separate trial, to avoid misjoinder, it is unnecessary to consider their evidence now.

It is gathered from the investigators' evidence that the timber & planks &c before the court were seized from 13 different places.

Art. 1 to 183 Chiefly sawn timber were found in the house of the accused:

They consist of Mathi, Teak and Beete.

Art: 184 to 216 were found in a shed belonging to the accused. They were of Teak, Beete and Mathi and Jettagu.

Art: 217 to 260 were found in another shed belonging to the 1st accused. In the sawpit near these sheds were found Articles 261 to 271. In the houses of the sawyers, near the saw pit were found articles 272 to 287. These articles 184 to 287 were found in and near the first saw pit.

Art: 288 to 325 were found in and near another saw pit, belonging to Abdul Aziz the 3rd accused. One of these is a big Beete log. The Beete log was partly dry, but all the other were freshly cut green timber.

In the bed of river Dhidhi was searched by the elephants, & seven Beete scantlings were found. (Art: 326 to 381).

Further 8 green teak logs

were dugged near the Agasebagal of the village (338 to 345)

In the dense jungle near the tank, were found 4 dressed logs of green teak (Art: 346 to 349).

In the District jungle i.e. a formal & unassessed waste, was found a newly felled log of wood (Art 350). In the jungle was found still another huge log that appeared to have been dragged by the elephants to some distance from the place where it was felled that is log numbered "6" which relates to C.C No 112 A, and nothing more need be said about this log. Three more pieces were also found there (Art: 352 to 354)

A branch log (Art: 355) also found in the jungle has been also dugged

Thus articles 346 to 355 were found in the jungles i.e. far from the village.

The investigators do not find any evidence connecting the accused with the timber found in the mango grove tank, and the jungles, apart from an alleged admission by the accused themselves.

A statement given before Mr. D. Raja Rao by abdul aziz (3rd accused) during his absence, and praying that the case may be got compounded under the Joint Regulation has been filed as Ex P, Mr R. Ramadas admitted it in evidence, as it was not a confession made either to a police officer or during the time the accused was under Police custody. But I fail to see how an admission given by Mr. D. Raja Rao, a person in authority, with the object of getting the case compounded, ie, with an eye to temporal affairs can be admitted in the face of the provisions contained in Sec: 24 of the Indian Evidence act.

It has been argued on behalf of the prosecution that Mr. D. Raja Rao being only a sub Division officer had no authority to compound the offence, which could be done only by a Joint Officer, subject to the approval of the Deputy Commissioner. But though Mr. D. Raja Rao could not compound,

he could recommend for it and as in the ordinary case of official business, the opinion of a responsible officer like a Sub assistant Commissioner is often accepted and approved by the Asst Govt Agent. I am of the opinion to say that the accused might very reasonably have hoped for an easy and less disgraceful disposal of his offence by a departmental composition. by a departmental And certainly the wording in Sec. 24 Indian Evidence Act warrants the conclusion that it is not so much the fact of the particular person being the authority that should be taken into consideration, in excluding a confession made to him, as the point whether the accused had sufficient reason to believe that the person to whom he confessed had enough authority to get him freed from prosecution.

Excluding this confession therefore, both the Dy. Raja Rao and the Sessions do not convict Articles 326 to 337 and 346 to 355

Nor do any of the other witnesses specifically connect the accused with any of these articles except at 357 Nicholas Pelaris to C. C. No. 112 A.

The remaining articles can be classified as sawn timber and planks found in the houses, sheds, and first saw pit, Arts. 1 to 287, the green timber and big Billa log found in and near the 2nd saw pit, articles 288 to 325, and the 8 green teak logs that were found near the Agase Bagal, or gate of the village (Art. 338 to 345).

The Manager witness and all the rest of the evidence goes to show that Art: 1 to 287 had been prepared for specific purposes, and nothing has been even alleged to show that they were illicitly got, except that so much timber was found in these places.

The real interest centres, however, round articles 288 to 325 and articles 338 to 345.

The defence admits that all these belong to

Abdul azij (3rd accused) with the exception of big beete log the introduction of which near the 2nd Saw pit is ~~furthered~~ gathered upon some malicious person, having a grudge against Abdul azij possibly sivanna himself.

The evidence as to the properties produced by the prosecutor before the court having been really seized at the alleged places, is calent, and the fact of seizure is not denied by the defence itself.

Therefore we have to consider the circumstances leading to the connection of the accused with these green logs and the partly dry beete log.

~~That the 2nd accused~~

That the 2nd saw pit is Abdul azij is admitted by him. But he has attempted to show that he had used it for sometime prior to the beginning of the case. In this attempt, however, he has failed, as it clear for the evidence adduced by him & his points elicited from Kanaffa (P.W. 3) in his cross-examination, it is clear that

Abdul Aziz using the fire till very near the date of investigation.

It has further been alleged that there was a good deal of plantain near that camp fire, and the big tree by might have been thrown in its midst by Firaun or some other malicious enemy. But the introduction a big log of wood is no easy job, and could not have been done stealthily at a time when the air was full with topic of the offence. In view of the fact that all this timber was still green, I hold that Abdul Aziz cannot shirk responsibility for their presence.

With respect to the green teak log found near the house Bafaln and owned by the accused as stored by him, he explains that he stored them under cover of a license Ex D. 19. granted to him on 15-4-1911, as under it he was entitled to 450 cubic feet leaving a balance of 290 c.f. to which was still entitled.

Abdul aziz (3rd. accused) with the exception of big beetle log the introduction of which near the 2nd. saw pit is ~~furthered~~ battered upon some malicious person, having a grudge against Abdul aziz possibly sivanna himself.

The evidence as to the properties produced by the prosecutor before the court having been really seized at the alleged places, is patent, and the fact of seizure is not denied by the defence itself.

Therefore we have to consider the circumstances leading to the connection of the accused with these green logs and the partly dry beete log.

~~That the 2nd accused~~

That the 2nd saw pit in Abdul aziz is admitted by him. But he has attempted to show that he had used it for sometime prior to the beginning of the case. In this attempt, however, he has failed, as it clear for the evidence adduced before & the points elicited from Kanaffa (P.W. 3) in his cross-examination, it is clear that

But the currency of the license has been fixed as expiring on 30-6-1911 and therefore any rights that Abdul Aziz had under that license ceased on that day, as in all cases, when time is of the essence of the contract. The green nature of the wood distinctly shows that be it had not been felled before 30-6-11. Abdul Aziz is Aziz is not a stranger to the Forest department and his own brother was in 2nd accused Hd guard in that department It is extremely unlikely that he would not have got these logs stamped "sold" before 30-6-11 if he had really collected them before then.

Therefore there can absolutely no doubt that that Abdul Aziz collected these logs unauthorizedly and with a dishonest intention, hoping that he were turned out, which was unlikely owing to the enormous influence which his own possession as Patel, his father's possession

as expatel and leasing right
and agent for other land holders
likely Mr. Hanakee Ramaff a and
his brothers possession as old
grand till very recently.

The defence evidence
is mainly directed to shew that
the 1st and 3rd. accused had
brought large quantities of timber
previously and that it is therefore
no wonder that they had so
large a quantity of sawn timber in
near their houses.

But the defence witnesses
themselves state that only dry
timber is removed under license
and standing green timber is not
allowed to be removed. The
defence evidence is also directed
to shew that it is an established
practice for the contractor to store
the timber collected by him near
his Agnee Bacal or river Bank prior
to their being stamped. But what
Abdul aziz has to answer is not
Why he stored the timber at his
Agnee bacal, but Why he removed
timber at all without a license

or with a time-expired license.

Both the prosecution and defence evidence go to show fully that Abdul aziz is guilty of either removing stealthily the timber found in and near the 2nd Saw pit, & the Agasi Bank, or he retained them knowing that they were unauthorized & felled timber ie, stolen ~~property~~ property. The latter has to be presumed to be the Offence committed as there is no direct evidence of Abdul aziz having removed the logs in person.

The further question has to be settled as to whether Mudanda the father of Abdul aziz and Mahamud Kadim, his brother, are not also guilty of the same Offence or at least of abetting that ~~the~~ Offence. Having in view the fact that they live together, that the Offence in question must hence been extended over a pretty long period in connivance, and then other circumstance, necessarily suggested by the connection Official & private of these two,

one is led to conclude that they must have abetted the crime. But the timber was not in their abode, and all the witness connect only Abdul aziz with the timber in question, and I therefore hesitate to come to the above conclusion.

The bare purchases of timber by the accused, the common nature of the timber (art: 1 to 28?) and their being dry take away any suspicion against the accused in that connection.

In the result, therefore, I find the accused Abdul aziz guilty of the offence under Sec 411 I.P.C with which he is charged only so far as articles 288 to 325 and 338 to 345 are concerned, and not guilty with regard to the rest of the articles. I further find the other two accused not guilty of the offence with they are charged.

I accordingly convict the accused Abdul aziz under

Sec: 258 Criminal Pro: code against accused and Md: Kasim under Sec: 258 Cr. Pro: code

In awarding sentence I take into consideration the extenuating nature of the crime & sentence Abdul Aziz to suffer rigorous imprisonment for one month and pay a fine of five rupees.

Out of the properties before the Court Ext: 1 to 287 will be handed over to the 1st accused and the rest to the Forest Deptt. to whom they respectively belong.

In Open Court.

Sd/ A.V. Ramanathan
24-6-43 I Class Magte.

Eco 603. J 287
616

Memo

With reference to the correspondence on the U.S.S. dealings, I beg to submit herewith, a copy of judgment in Chunder v Mb & Co., as desired by Mr Lewis for kind perusal & transmission of the same to him.

D. Louis Dun
10.9.13.

Rec'd 11/9/13

Forwarding the Conservator's letter to the District Magistrate, Shimoga, for opinion

G. R. S. 26]

Ft File No. 73-13

Serial No. 241

Diary No. of letter replied to 2895

No. R 3519 Cons 1

General and Revenue Secretariat

(Ft)

, *the* *191* .

To

The District Magistrate,
Shimoga District.

Date of issue 25-11-1913

Signed by Mr. G. Venkata Rao

Sir,

I am directed to forward herewith copy of letter no. 4087 dated 8th October 1913 from the Conservator of Forests ~~suggesting~~ Suggesting the advisibility of preferring an appeal against the order ~~of~~ of acquittal ~~and~~ of inadequate punishment passed by the 1st class Magistrate of

over.

SUBJECT.

Shimoga (acquitting two persons and awarding inadequate punishment to a third person in certain prosecutions

for theft of timber (criminal Case no. 112 of 1911-12), and to request the favour of your opinion in Consultation, if need be, with the Govt. Advocate.

I have etc

for Secretary.

24/11

20/11/13

List of enclosures.

Copied by

Examined by

GPB—25,000—8-8-11.

o. 349 Jud/one Office of the District Magistrate,
R 191
Shimoga District,
Dated Shimoga, 25th February 1914.
2nd March 1914
6026
D.RV No.....

From

1913-Vol.K. Matthan, Esquire., B.A.,
District Magistrate,
Shimoga.

To

K.R.Srinivasa Iyengar, Esquire., M.A.,
Secretary to the Government of Mysore,
General and Revenue Departments,
Bangalore.

Sir,

In reply to your letter No.R.3919/Ft.73-13-2 dated 25th November 1913 calling for my opinion in the matter of filing an appeal against the order of acquittal passed by the Assistant Commissioner and 1st class Magistrate, Shimoga Division, in criminal case No.112 of 1913-12, I have the honour to state that the letter which was received here on the 26th November and referred the same ~~day~~ day to the District Forest Officer, Shimoga, for an expression of his opinion was received back only on the 5th instant. The judgment of the Assistant Commissioner Magistrate having been pronounced on the 24th June 1913, the period for filing the appeal expired on the 24th December 1913.

2. In this case, two of the accused persons were acquitted and the remaining one was convicted by the Lower court. The conviction was upheld by the appellate court (Sessions Judge) but the Chief Court on revision set aside the conviction being of opinion that the whole trial was vitiated by many illegalities. A copy of the order of the Chief Court is herewith submitted for information. The Chief Court has further directed that if the prosecution be so advised a proper charge sheet may be preferred against the man whose conviction was set aside and a legal trial held.

The records connected with the case were not

available

I 3 3 Pt. 25 1914

6026

From

The District Magistrate,

Shimoga.

To The Secretary

to the Government of Mysore,

General and Revenue Departments.

Dated 25th February 1914.

Despatched 2nd March 1914

Received

General No. 319

No. R. 191

Enclosure No. One

In reply to his No.R.3919/Ft.73-13-2 dated 25th November 1913 submits opinion in the matter of filing an appeal against the order of acquittal passed by the Assistant Commissioner and 1st class Magistrate, Shimoga Division in criminal case No.112 of 1911-12.

GRB—50,000—26-9-12

vailable for reference as they had been first called for by the Sessions Judge for disposal of the appeal, and afterwards by the Chief Court, and were received back from the Chief Court only on the 20th December 1913. If the Chief Court should be willing to accept this as a reason for condoning the delay I would suggest that an appeal against the acquittal of the persons who have been let off may now be filed, and an order obtained to have a retrial of the case as far as these two men are concerned in the same way as a retrial of the 3rd accused has been ordered. On the merits of the case it appears to me that all the accused persons were equally concerned in the theft of timber or in the alternative of retention of the timber knowing it to be stolen. The accused persons are all closely related to each other, some of the logs were found in the house and shed of the 1st accused, and the 1st class Magistrate's reasons for entertaining any doubt as regards the guilt, at any rate, of the 1st accused do not appear to be very sound.

I have the honour to be,

Sir,

Your most obedient servant,

Macaulay

District Magistrate,

Shimoga.

B.B.

(41)

In the Chief Court of Mysore at Bangalore.

Wednesday the 10th day of December 1913.

Before Mr.Justice E.H.Wallace.

Criminal Revision Petition No.24 of 1913-14.

Abdul Aziz. 3rd accused. Petitioner.

(By Messers.S.Ranganna and H.Nanjundayya.)

Vs

The Government of Mysore. Complainant. Opponent.

(By Mr.C.S.Doraswami Iyer,Government Advocate).

Criminal Revision Petition against the proceedings of the Sessions Judge,Shimoga Division,in criminal appeal No.37 of 1912-13 confirming the conviction and sentence of the Assistant Commissioner and First class Magistrate of Shimoga Sub-Division in criminal case No.112 of 1911-12.

The petition coming on for hearing on Tuesday,the 2nd day of December 1913,the court pronounced the following:-

O R D E R.

1. Petitioner has been convicted of receiving or retaining stolen property under section 411,Indian Penal Code. The conviction was upheld on appeal by the Sessions Judge.

2. The subject matter of the offence is a lot of pieces of timber,planks,logs etc. These were,according to the prosecution evidence,probably Government timber from a Government Forest. The number of pieces was in all 355. They were found in about 13 different places,including the house of 1st accused,the sheds of 1st accused, a saw pit,the houses of various sawyers,the saw pit of 3rd accused (Petitioner),a river bed,a river bank,near a village gate,and lying open in the jungle. There were three accused in the case. The charge framed in the case was of the vaguest possible kind,charging the three accused that they "on or about the 14th December 1911 (the day of the finding of the timber,apparently) dishonesty retained stolen property to wit,the timber before the court,knowing or having reason to believe that same to be stolen property".

3.

3. Thus, 3 accused persons were charged, jointly or severally (it is not stated which), with retaining 355 different pieces of stolen property found in thirteen different places. The prosecution has not alleged or made any attempt to show that all the accused were concerned jointly, i.e., as one person, in retaining any or all of the stolen pieces of timber, has not specified which accused retained which stolen property, and has not pleaded, that the retention of the 355 pieces constituted only one offence or at ~~least~~ least not more that 3 offences, or that the retention of all these stolen articles ~~from~~ form one transaction-Prima facie, the retention of each article is a distinct offence.

4. The charge framed is manifestly altogether illegal in more ways than one. It was illegal in charging all the 3 accused together with a series of distinct offences not committed in the course of the same transaction (Vide 29 Bombay.449) and it was illegal in charging all or any of the accused with more than 3 distinct offences of the same kind (Vide 25 Madras 61 and 9 Calcutta, weekly notes 1027). This is not an illegality which can be caused by force of section 537, criminal Procedure Code, even though the accused did not take any objection to the form of the charges either in the original court or in the lower appellate court. The trial together of 3 accused persons for such a multitude of distinct offences must "cause confusion and interfere with the definite proof of a distinct offence which it is the object of all criminal Procedure to obtain". (Vide Judgment of the Privy Council in 25 Madras 61).

5. The trial and conviction of petitioner was therefore illegal and the conviction is hereby set aside. The prosecution may, if so advised, prefer proper charge sheets against the petitioner, on which a legal trial may be held.

6. I may remark, in passing that the original court has not given sufficient reasons for holding Exhibit P.1. to be inadmissible in evidence. That court held it to be inadmissible because petitioner probably "had sufficient reason to believe that the person to whom he confessed had enough authority to get him freed from prosecution". But this is not enough. Under Section 24, Indian Evidence Act, the confession is only inadmissible if it "appears to the court to have been caused by any inducement, threat or promise -----". In this

case

case there is no evidence and petitioner has not pleaded, that any inducement, threat or promise was made by any one and so far as it appears, the statement was made quite voluntarily. There was no reason therefore to rule out Exhibit P.1. as inadmissible in evidence.

Sd. E.H.Wallace.

Judge.

"True Copy".

Sd. B.Basavaradhya.

Deputy Registrar.

"C O P Y."

Sd. B.S.Krishnaswami Iyengar.

Sessions Judge,

Shimoga Division.

"C O P Y."

District Magistrate,

Shimoga.

B.B.

G.R.S. 28]

5 / 18/2

Appeal against acquittals in ~~case~~ murder trial case in Shimoga.

48

File No. 73-10
Serial No. 4

Diary No. of letter replied to 6026

Proceedings of the Government of His Highness the Maharaja of Mysore

GENERAL AND REVENUE SECRETARIAT.
(Final)

, the 191 .

Date of issue 16/3/14

Signed by W B Ramanarain

READ—

letter no 4087 of ~~the~~ 1st Oct 1913 from the Com^r of Factories urging the necessity of preferring an appeal against the order of acquittal of two of the accused ~~ORDER THEREON—No.~~ and against the inadequate ~~punishment~~ sentence passed on the 3rd accused in Cr. case No 112 of 1911-12 before the I Class Magistrate of Shimoga Sub-Div. ~

over.

SUBJECT.

in which the accused were
charged of the theft of a large
quantity of sandal timber.

2) Letter no 349 | R191
of the 2nd March 1914 from the
Dist Magistrate, Shimoga Dist,
stating that the conviction of
one of the accused was, on appeal,
set aside by the Chief Court, on
account of several irregularities in
the procedure, with, however, the
option of preferring proper charges
on which a legal trial may be held,
& that the time fixed for preferring
appeals against the ordering acquittal
expired on 24.12.13, & that, as the records
of the case were not available, no
steps can be taken before that
date & that if the Chief Court
should accept this ground as sufficient
to condone the delay in preferring the
appeal, an appeal will be filed
further Obtained from retrial
of the case.

with the remarks of the Chief court,

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

Order Memo. 7/14 4

Govt direct that an appeal should at once be preferred against the order of acquittal, and the Court moved for condoning the delay in preferring the appeal. The Dist Magistrate is requested to take necessary steps on this behalf, as indicated in the Govt Advocate's note, the copy of which is herewith forwarded.

A report on the result of the action taken may be made to Govt.—

14/3

14/3

20 13/3/14. Secy to Govt

The Commy Dvsn } with a copy of the Govt Advocate's Endg. No & Date of note

The Dist Magistrate Sambalpur }

The Govt Advocate

8

13/3/14

GPB—10,000—22-2-11

No.380 Encl.
Very Urgent

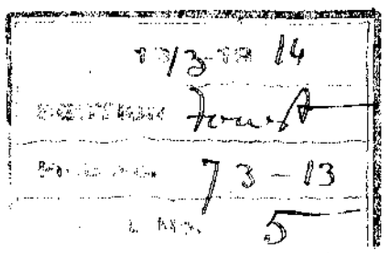
Office of the District Magistrate,

Dated Shimoga, 25th March 1914.

From

D.A.V No. 6574

K.Matthan, Esquire., B.A.,
District Magistrate,
Shimoga.



To

K.R.Srinivasa Iyengar, Esquire., M.A.,
Secretary to the Government of Mysore,
General and Revenue Departments,
Bangalore.

Sir,

Adverting to Government Order No.R.4342-4/Ft.73-13-4 dated 18th instant directing that an appeal be preferred against the order of acquittal in criminal case No.113 of 1911-12 on the file of the Assistant Commissioner and 1st class Magistrate, Shimoga Division, I have the honour to state that neither the order of Government nor the letter on the subject received from the Government Advocate is clear as to who should make the affidavit in the case. The question of filing an appeal was first mooted by the Conservator of Forests in Mysore and he will be best able to make a statement as to the cause of the delay, and an affidavit by him is apparently what is required.

If, however, it is the opinion of the Government that the District Magistrate should make the affidavit, I can file one in the terms of the enclosed draft.

I shall take further steps in the matter immediately on hearing from you.

I have the honour to be,

Sir,

Your most obedient servant,

District Magistrate,
Shimoga.

K.B.

1 Rr. 16/3
Very urgent

From 1914

The District Magistrate,
Shimoga District.

To The Secretary
to the Government of Mysore,
General and Revenue Department.

Dated 25th March 1914.
Despatched
Received
General No. 380
No. 2.3
Enclosure No. One.

Referring to G.O.No.R.4643-4/
Ft.73-13-4 dated 16th instant, submi
a draft affidavit for perusal in th
matter of an appeal against the ord
of acquittal in C.C.No.113 of 1911-

GPB—50,000—26-9-12

D R A F T.

Affidavit made by the District Magistrate of Shimoga in the matter of the appeal against the order of acquittal in criminal case No.112 of 1911-12 on the file of the Assistant Commissioner and 1st class Magistrate, Shimoga Division.

The Conservator of Forests in Mysore brought to the notice of Government the advisibility of preferring an appeal against the order of the Assistant Commissioner and 1st class Magistrate, Shimoga Division, in criminal case No.112 of 1911-12 acquitting two of the three persons accused of theft of timber. My opinion on the subject was called for by Government on the 25th November 1913. As the records connected with the case were not available for reference, the same having been sent to the Sessions Court for disposal of the appeal and then to the Chief Court for disposal of the Revision Petition, the opinion of the District Forest Officer who was conversant with the details of the case had to be obtained. The papers were sent to that officer on the 26th November 1913 and were received back from him on the 5th February 1914. The opinion called for by Government was furnished on the 25th idem and the orders of Government were received on the 17th March 1914. There was no avoidable delay in dealing with the matter.

District Magistrate,
Shimoga.

I affirm that the facts above stated are true to the best of my knowledge and belief.

District Magistrate,
Shimoga.

appeal against
certain persons
theft acquittal

[G. R. S. 26]

30/3

File No. R-77-76
Serial No. 6

Diary No. of letter replied to 65-76

Immediate

(63

No. R 7730

General and Revenue Secretariat
(first)
, the *191* .

To

The District Magistrate
Pudukkottai

Date of issue 30-3-1916

Signed by Mr. S. P. Rajagopalachari

I am directed to refer to your letter
No 3807/J 35 of the 25th inst
in the matter of the appeal
to be preferred against the order
of acquittal passed in Cr: Case No
112 of 1915 by the I Class
Magistrate's Court of Thirumayam,
I am directed to state that
it is considered desirable
~~You are considered~~
that you should make
~~the proper Authority to make~~
the affidavit in question,

over.

SUBJECT.

accordingly the draft affidavit
submitted by you ~~will do~~ is suitable
~~for the purpose~~

Thank
You
&
Reg

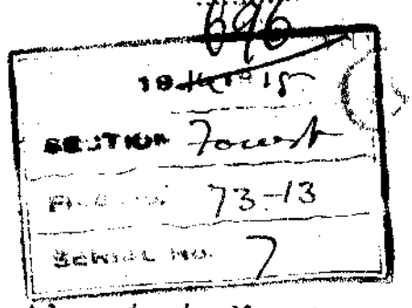
15 26 73
88
26/3

List of enclosures.

Copied by

Examined by

GPB—25,000—8-8-11.



No. 14

Office of the Government Advocate in Mysore,
Bangalore dated, 20th July 1914.

From,

C. S. Doraswamy Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To,

The Offg: Secretary to the Government of His Highness
the Maharaja of Mysore, General and Revenue Deptts.

Sir,

Adverting to Government Order No. R.7342-4/F.L.73-13-4 dated 16th March 1914 directing an appeal against the order of acquittal passed on two of the accused by the 1st class -- Magistrate, Shimoga Sub Division, in Criminal case No.112 of 1911-12 on the file of his Court, I have the honour to report that the appeal so filed, coming on for admission on the 8th day of July 1914 the Honourable Judges of the Chief Court, have passed orders dismissing the appeal as time barred.

2. A copy of the judgment passed in the appeal in ------ question is herewith forwarded.

I have the honour to be,
Sir,
Your most obedient servant,

Government Advocate.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Wednesday, the 8th day of July 1914.

Present.

Mr.Justice K.S.Chandrasekhara Aiyar,

and

Mr.Justice T. Paramasiva Iyer.

Criminal appeal No.86 of 13-14.

The Government of Mysore, (Complainant) Appellant.

VS.

1. Madar Sab.
2. Mohmamed Hussain. (Accused 1 & 2) Respondents.

Criminal appeal against the order of acquittal passed by the Assistant Commissioner and 1st class Magistrate, Shimoga, Sub ---- Division in Criminal case No.112 of 1911-12.

This Criminal appeal coming on for admission this day, the Court delivered the following:-

J U D G M E N T.

This appeal by Government is out of time by more than three months; and the reason given for not filing it in time does not -- commend itself to us as at all adequate. We therefore dismiss the appeal.

C O P Y.

(SD). K.S.Chandrasekhara Aiyar,
Judge.

(SD). T. Paramasiva Iyer,
Judge.

Government Advocate.

2476.

Proceedings of the Government of His Highness
the Maharaja of Mysore.

Order No. J 1600-49/[illegible] 9-11

Dated, Bangalore, the [illegible] 1915.

Instances have come to the notice of Government in which Departments of Government interested in the prosecution of offenders cease to take such interest as soon as a charge sheet is placed before a Magistrate with the impression that the subsequent responsibility for the successful termination of the trial rests with the Police or the Public Prosecutor. This attitude on the part of the local representatives of the Departments concerned has often led not only to the failure of such prosecutions but also to the appeals against the decisions of subordinate Magistrates when preferred to the appellate courts being dismissed as time-barred.

Government are therefore pleased to direct the Heads of Departments to impress upon their local representatives that it is their duty to keep themselves in touch with the trial and take timely steps to file appeals, should the decisions be found to be unsatisfactory.

R Srinivasa

for Secretary to Government,
Home General Department.

To

The Heads of Departments, and
Deputy Commissioners of Districts.

Copy to Br I

MRN. 5.